IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 390 OF 2006

Amol Navelkar
Usha Smruti, 364/1
B. Anadi Parra,
Bardez-Goa. ... Applicant

versus

Shri Nitin B. Virginkar
418, Abade Faria Road,
Margao, Salcete-Goa. ... Respondent

Mr. V. P. Thali, Advocate for the Applicant.

Mr. A. D. Bhobe, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 31ST JANUARY, 2007.

ORAL ORDER

The complainant in C.C.No.1065/2001/OA/A/D has sought special leave to appeal against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881(Act, for short), vide Judgment/Order dated 9-6-2006.

2. Heard the learned Counsel on behalf of the applicant/complainant and the respondent/accused.

3. The case of the complainant was that the complainant had advanced to the accused in the course of business, a loan of Rs.80,000/- and the accused in repayment of the said loan had issued to the complainant a cheque dated 9-7-2001 bearing No.0277460 for Rs.80,000/- which when presented for encashment was returned with endorsement "Refer to Drawer" and after the complainant issued the said statutory notice which the accused received on 7-11-2001, the accused failed to make the payment within 15 days of receipt of the said notice. In support of the case, the complainant had examined himself. The accused also examined himself as well as the Bank Manager.

4. Admittedly, the complainant and the accused are maternal first cousins and the accused had also been residing with the complainant from the year 1989 to 1994. The parents of the accused had also given a power of attorney to the complainant and it appears that on the allegation that the said power of attorney was misused by the complainant a Civil Suit

bearing No.81/2001/B has been filed and the same is pending. The case of the accused was that the complainant misused one of the two blank cheques which were given by the accused to the complainant and filled in the details and presented the same for payment in order to pressurize the accused to withdraw the said Civil Suit.

5. The learned trial Court after considering the evidence led on behalf of both the parties came to the conclusion that as per the complainant himself the accused had owed to the complainant a sum of Rs.55,000/- and that was of the year 1989 and the said debt was time barred and therefore the accused had sufficiently rebutted the presumption available to the complainant under Section 139 of the Act.

6. Although, the complainant filed the complaint with the allegation that the subject cheque was issued by the accused towards the repayment of the loan of Rs.80,000/- advanced by the complainant to the accused during the course of business, the complainant abandoned the said case in cross-examination and stated that the amount of the cheque included the costs of

the material worth Rs.55,000/- which was given to the accused in the year 1989 and it is in this view of the matter that the learned trial Court came to the conclusion that the subject cheque was issued towards part of the debt which was time barred. As far as the balance amount of Rs.25,000/- was concerned, the complainant sought to explain the said balance by stating that he had advanced the same on different occasions in the sums of Rs.2000/- to Rs.5000/- during the period the accused was residing with the complainant and that is from the year 1989 to the year 1994. When questioned further, the complainant stated that he could not specify the period during which the accused had taken the said sum of Rs.25,000/- from him. If the said sum of Rs.25,000/- was lent by the complainant to the accused prior to the year 1994 then again the said sum would be clearly time barred. That the cheque was issued towards a time barred debt is one view of the matter and to that extent the conclusion of the learned trial Court could not be faulted.

7. There is also another view of the matter. It is the case of the accused that the complainant has misused one of the

blank cheques signed by him and which was given to the complainant. The complainant has admitted that all the contents of the cheque except the signature, are in his handwriting. The complainant has also admitted that the accused used to assist him in his business and not only that has further admitted that the subject cheque was drawn on the account of the accused bearing no.3584 maintained by the accused in Goa urban Co-operative Bank. The complainant further admitted that he had deposited and withdrawn money from the said account personally, apart from the subject cheque. The complainant, when further cross-examined, stated that he could not remember on how many occasions he had operated the said account and further stated that he could not remember that he had withdrawn the cash from the said account on certain occasions on the basis of self cheques given by the accused. The accused has stated that he used to keep blank cheques with the complainant so as to enable him to effect payment of money to different persons and that the subject cheque for Rs.80,000/- was from the cheque book containing cheques from serial nos.0277451 to 0277460. The accused further stated that the complainant had malafidely retained two blank cheques signed

by him bearing nos.0277459 and 0277460 and that he was not even aware that the said cheques were retained by the complainant and that after the said cheque book containing the said cheques was exhausted he had even procured from the Bank fresh cheque book and had continued with his transactions with the complainant and after the receipt of the demand notice when he learnt about the misuse of the cheque, he closed the said account bearing no.3584 on 7-11-2001 to avoid its further misuse at the hands of the complainant. The accused also stated that the complainant was assisting him in the said business of brokerage by withdrawing the money from his account on his behalf, and paying to the respective parties.

8. Considering the facts stated by the accused and considering that the parties were closely related to one another and helping one another in their business and further considering that the complainant himself abandoned the case initially stated by him that the cheque was issued towards a loan advanced by him to the complainant, it is the case of the accused which appeared to be probable that one of the cheques kept by him with the complainant was misused by the complainant.

Considering this aspect of the case as well, this is not a case to grant special leave to the complainant. Application for special leave is therefore hereby dismissed.

N. A. BRITTO, J.

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